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U.S. BANKRUPTCY COURT
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Attorney for Defendant
John Dutkin, Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,) Case No. BK-S-06-10725 LBR
) Case No. BK-S-06-10726-LBR
) Case No. BK-S-06-10727-LBR
Debtor.)

In re:) Case No. BK-S-06-10728-LBR
) Case No. BK-S-06-10729-LBR

USA CAPITAL RALTY ADVISORS, LLC.)
) Chapter 11
)
Debtor.)

In re:)
) Jointly Administered Under
) Case No. BK-S-06-10725 LBR

USA CAPITAL DIVERSIFIED TRUST DEED)
FUND, LLC,)
)
Debtor.)

In re:)
)
)
USA CAPITAL FIRST TRUST DEED FUND,)
LLC,)
)
Debtor.)

In re:)
) CLAIM NO. 10725-01395

USA SECURITIES, LLC,)
)
Debtor.)

Affects:) SUPPLEMENTAL BRIEF OF JOHN DUTKIN,
) TRUSTEE, TO MOTION FOR SUMMARY
) JUDGMENT & OBJECTION OF USA
) COMMERCIAL MORTGAGE COMPANY
) TO CLAIM OF DUTKIN TRUST
) ASSERTING SECURED STATUS

☐ All Debtors)
☒ USA Commercial Mortgage Co.)
☐ USA Securities)
☐ USA Capital Realty Advisors,)
LLC)
☐ USA Capital Diversified Trust) Hearing date: February 21, 2008
.Deed Fund, LLC) Hearing time: 9:30 a.m.
☐ USA First Trust Deed Fund, LLC)

Claimant, JOHN DUTKIN, TRUSTEE OF THE JOHN DUTKIN REVOCABLE LIVING
TRUST DATED 1/17/00, hereinafter referred to as "DUTKIN", by and through

1 his undersigned counsel, responds to the additional briefing requested by
2 the Court as follows:

3
4 1) ARE THE FUNDS THAT JOHN DUTKIN SEEKS TO RECOVER AS PART OF HIS
5 CLAIM AGAINST USACM ALREADY AT ISSUE AS PART OF THE PENDING INTERPLEADER
6 ACTION?

7 The Dutkin Trust was served with a copy of the Complaint in
8 Interpleader and filed a response to such Complaint. To the best extent
9 of counsel's knowledge the funds were deposited with the Court and counsel
10 for USACM withdrew his representation. All attempts to seek recovery of
11 funds through the interpleader were fruitless as there is no attorney to
12 authorize release funds. Since the hearing in this case, counsel has
13 filed a Stipulation for settlement of a portion of the Dutkin Trust claim
14 for \$6,120.90 and a Motion for Summary Judgment as to the remaining
15 portion of the Dutkin Trust claim for \$50,000.00 in the interpleader. The
16 Motion is set for hearing on March 25, 2008, at 9:30 a.m.

17 2) DID THE COURT ENTER AN ORDER UNDER WHICH USACM COULD HAVE AND/OR
18 SHOULD HAVE HONORED THE CHECKS WRITTEN TO JOHN DUTKIN THAT WERE REJECTED
19 BY USACM POST-PETITION?

20 Counsel does not know of any such order.

21
22 3) IS DUTKIN'S CLAIM ENTITLED TO SECURED STATUS BASED UPON A
23 CONSTRUCTIVE TRUST THEORY, OR BECAUSE USACM MIGHT HAVE BEEN ACTING AS A
24 FIDUCIARY?

25 Counsel contends that USACM acted in the capacity of a Mortgage
26 Broker and had the fiduciary duty of a mortgage broker. The money it
27 collected from the sale of the Dutkin Trust's interest in the loan and
28 deed of trust should have been deposited in a trust account and kept
separate from money belonging to the mortgage broker. Under NRS 645B.175,

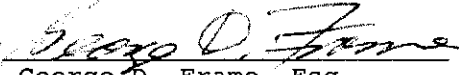
1 the sale handled by USACM as mortgage broker was completed, the funds
2 should have been contained in an escrow or trust account which would not
3 have been subject to this bankruptcy, and the checks issued to the Trust
4 (and others) should have cleared.

5 As it now stands, the Dudkin Trust does not have the security of the
6 deed nor does it have the funds represented by the checks which did not
7 clear the account of USACM which was not maintained in the manner provided
8 by statute for similar funds received by a mortgage broker.

9 The claim of the Dutkin Trust should be allowed to remain in its
10 secured status until the Dutkin Trust receives payment of funds
11 represented by the checks issued to it totaling \$56,190.00.

12 Respectfully submitted this 31st day of January, 2008.

13 GEORGE D. FRAME, LTD.

14 By 
15 George D. Frame, Esq.
16 601 Greenway Road, Ste. D
17 Henderson, NV 89002
18 Attorney for Successor
19 Trustees of John Dutkin Revoc.
20 Liv. Trust dated 1-17-00

21 CERTIFICATE OF MAILING

22 I hereby certify that I am an employee of GEORGE D. FRAME, LTD. and
23 that on the 31 day of January, 2008, I did deposit in the United States
24 Post Office at Henderson, Nevada, postage pre-paid, first class mail, in a
25 sealed envelope, a true and correct copy of the foregoing document
26 addressed to Susan M. Freeman, Esq. and Rob Charles, Esq. of Lewis & Roca
27 LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169-5996.

28 
Employee of GEORGE D. FRAME, LTD.